

## **U.S. BANKRUPTCY ADMINISTRATOR SOUTHERN DISTRICT OF ALABAMA**

### **INSTRUCTIONS FOR APPLICATION FOR APPROVAL AS A NONPROFIT BUDGET AND CREDIT COUNSELING AGENCY**

**Introduction.** A nonprofit budget and credit counseling agency (“Agency”) seeking approval by the Bankruptcy Administrator, in accordance with 11 U.S.C. § 111, shall submit an application to the Office of the US Bankruptcy Administrator in the form described below. The Agency must provide all information and documents required by the Bankruptcy Administrator responsible for the judicial district in which the Agency seeks approval. Unless otherwise stated, all information and documents shall be in writing. All documents provided shall be either original or “conformed copies.”

**Mailing Instructions, Information Requests, and Notifications.** The application package must include the completed application and all documents and information requested. Once completed, the entire package should be sent to the following address:

US Bankruptcy Administrator  
P.O. Box 3083  
Mobile, AL 36652  
Attn: Lisa Lopez  
(251) 441-5433

or

US Bankruptcy Administrator  
182 St Francis St, Ste 100  
Mobile, AL 36602  
Attn: Lisa Lopez  
(251) 441-5433

Supplemental information requests and notifications will be sent to the principal contact identified in the application. Responses to requests must be submitted to the address stated above unless otherwise instructed.

Applications should be completed in their entirety before submission. An incomplete application may result in delay or denial of the application. Upon receipt of the application, the Agency will receive, as soon as practical, an acknowledgment letter which may include a request for additional information. Written inquiries concerning the status of the application should be directed to the above address.

**Application Form and Instructions.** The application form and instructions consist of the following sections:

- |            |   |
|------------|---|
| Section 1. | General Information Concerning the Organization   |
| Section 2. | Status as a Nonprofit Organization  |
| Section 3. | Quality, Experience, and Education in Credit Counseling Services                        |
| Section 4. | Counseling Services and Reasonableness of Fees  |
| Section 5. | Qualifications of Counselors  |
| Section 6. | Administration of Debt Management Plans and the Safekeeping and Payment of Client Funds |

- Section 7. Acknowledgments, Agreements, and Declaration
- Section 8. Certification and Signature
- Appendix A. Acknowledgments, Agreements, and Declarations in Support of Application for Approval as a Nonprofit Budget and Credit Counseling Agency
- Appendix B. Employee Qualifications Matrix

Comments regarding this application should be directed to the Administrative Office of the US Courts, Bankruptcy Division, Suite 4-250, Washington, DC 20544.

**Section 1. General Information Concerning the Organization**

1. Complete Section 1 of the Application.

**Section 2. Status as a Nonprofit Organization**

1. Nonprofit. The Agency must be organized and operated as a nonprofit entity and have an independent board of directors, board of trustees, or other governing body, the majority of which - (i) are not employed by such Agency and (ii) will not directly or indirectly benefit financially from the outcome of the counseling services provided by such Agency. An Agency may not engage in any conduct or transactions that generate or create the appearance of generating a private benefit for any individual or group. The Agency must provide copies of tax returns for the two years immediately preceding the date of the application.
2. Complete Section 2 of the Application.

**Section 3. Quality, Experience, and Background in Providing Credit Counseling Services**

1. Generally. The Agency must operate in a prudent business manner and shall deal responsibly and effectively with matters relating to the quality, effectiveness, and financial security of the services it provides.
2. Experience. The Agency must have adequate experience and education in credit counseling. To meet this requirement, the Agency or its counselors must have provided credit counseling services for at least the past two calendar years. Alternatively, the Agency may, at the sole discretion of the Bankruptcy Administrator, substitute educational or experiential equivalents as follows: equivalent period of course work leading to a professional certification in a financial, legal or education field; equivalent period of prior employment in the field of consumer credit counseling, banking or accounting.
3. Compliance with Laws and Regulations. The Agency and its officers, directors, or operators, must be in compliance with all applicable laws and regulations of the

United States and each state, commonwealth, district, or territory of the United States in which the Agency conducts credit counseling services. Nothing contained in these instructions, the application, or the appendix thereto is intended to preempt any applicable law or regulation governing the conduct or operations of an Agency.

4. Complete Section 3 of the Application.

#### **Section 4. Counseling Services and Reasonableness of Fees**

1. Adequate Credit Counseling Services. An agency shall provide, at a minimum, adequate briefings, budget analysis, and credit counseling services to clients which include consideration of all alternatives to resolve a client's credit problems, an analysis of the client's current financial condition, discussion of the factors that caused such financial condition, and how the client can develop a plan to respond to the problems without incurring negative amortization of debt.
2. Providers of Telephonic Services or Internet Services. In addition to meeting all other requirements, an Agency that provides telephonic services or Internet services must demonstrate sufficient experience and proficiency in designing and providing services over the telephone or Internet.
3. Reasonableness of Fees. Fees, contributions, or payments received from clients for counseling services must be reasonable in amount, and the Agency will provide services without regard to a client's ability to pay and will not withhold a certificate of counseling because of an inability to pay.
4. Complete Section 4 of the Application.

#### **Section 5. Qualifications of Counselors**

1. Trained Counselors. The Agency must provide trained and experienced counselors.
2. Certification and Experience. A counselor must be deemed to have adequate training and experience to provide credit counseling and budget analysis if the counselor is accredited or certified by a recognized independent organization, such as the National Foundation for Credit Counseling ("NFCC") or the Association of Independent Consumer Credit Counseling Agencies ("AICCCA"), or has successfully completed a course of study acceptable to the Bankruptcy Administrator and has worked a minimum of six months in a related area, including personal finance, budgeting, or debt management.
3. Complete Section 5 of the Application.

**Section 6. Administration of Debt Management Plans and the Safekeeping and Payment of Client Funds (This section applies only to Agencies offering debt management plans.)**

1. Financial Security. The Agency must have adequate financial resources to provide continuing support services for debt management plans over the life of any plan, and provide for the safekeeping of client funds.
2. Banking. The Agency must deposit all client funds into a trust account insured by the Federal Deposit Insurance Corporation (FDIC) in the amount of \$100,000 with respect to each client. The Agency must provide evidence of the trust account by providing the account number and name of the financial institution to the Bankruptcy Administrator.
3. Accounting. The Agency must keep and maintain books, accounts, and records to provide a clear and readily understandable record of all business conducted by the Agency.
4. Bonding. Agencies that offer Debt Management Plans must provide the following:

A surety bond payable to the United States in an amount which is the lesser of:

(1) two percent of the Agency's prior year disbursements made from trust accounts based upon the information provided in the last annual audit or fiscal year end financial statement; or (2) equal to the average daily balance maintained in all trust accounts for the six months prior to submission of the application. At a minimum, the bond must be \$5,000.

1. An Agency may receive an offset/credit in the surety bond amount required by the Bankruptcy Administrator as follows: (1) the Agency has obtained a surety bond, or similar cash, securities, insurance (other than employee fidelity insurance), or letter of credit, in compliance with the requirements of the state, commonwealth, district, or territory ("state") in which the Agency seeks approval from the Bankruptcy Administrator; (2) the surety bond provides protection for the clients of the Agency; (3) the surety bond, or similar cash, securities, insurance, or letter of credit, must be written in favor of the state or the appropriate state agency; and (4) the offset/credit is based on the annual disbursements or average daily bank balance directly related to the clients in the particular state. See Example 1 below.
2. Proof of adequate employee bonding or fidelity insurance. The amount shall be 50 percent of the surety bond amount calculated prior to any offset/credit that the Agency may receive for state bonds. At a minimum, the employee bond or fidelity insurance must be \$5,000.
3. An Agency may receive an offset/credit in the employee bond/fidelity insurance

amount required by the Bankruptcy Administrator as follows: (1) the Agency has obtained an employee bond or fidelity insurance in compliance with the requirements of a state, commonwealth, district, or territory in which the Agency seeks approval from the Bankruptcy Administrator; (2) the deductible cannot exceed a reasonable amount considering the financial resources of the Agency; and (3) the offset/credit is based on the annual disbursements or average daily bank balance directly related to the clients in the particular state. See Example 2 below.

#### Example 1: Surety Bond Offset/Credit

An Agency with total annual disbursements of \$3,000,000 seeks approval in judicial districts located in two states. The disbursements for the clients in each state are \$1,000,000. State 1 has no bonding requirement and State 2 has a fixed surety bond of \$15,000. The Agency would determine the appropriate bonding requirement as follows:

| State   | Disbursements | 2% Bond Requirement * | State Bond Amount | BA Bond Amount |
|---|---------------|-----------------------|-------------------|----------------|
| 1   | \$1,000,000   | \$20,000              | -0-               | \$20,000       |
| 2   | \$1,000,000   | \$20,000              | \$15,000          | \$5,000        |
| Total   |               |                       |                   | \$25,000       |
| * In lieu of two percent of total annual disbursements, an Agency may use its average daily balance maintained in all trust accounts for the six months prior to submission of the application. |               |                       |                   |                |

To the extent that an Agency has offset/credit credited bonds obtained in compliance with state regulations, the Agency must provide a bond calculation, similar to the example above, with the original surety bond provided in compliance with the Application for Approval as a Nonprofit Budget and Credit Counseling Agency.

## Example 2: Employee Bond/Fidelity Insurance Offset/Credit

An Agency with total annual disbursements of \$2,000,000 seeks approval in judicial districts located in two states. The disbursements for the clients in each state are \$1,000,000. State 1 has no employee bonding or fidelity insurance requirement and State 2 has an employee bonding or fidelity insurance requirement of 10 percent of monthly average disbursement (\$83,000). The Agency would determine the appropriate employee bonding or fidelity insurance requirement as follows:

| State   | Disbursements | Surety Bond Prior to Any Offset/Credits* | 50% of Surety Bond | State Insurance Amount | BA Insurance Amount |
|---|---------------|--|--------------------|------------------------|---------------------|
| 1   | \$1,000,000   | \$20,000                                 | \$10,000           | -0-                    | \$10,000            |
| 2   | \$1,000,000   | \$20,000                                 | \$15,000           | \$8,300                | \$1,700             |
| Total   |               |  |                    |                        | \$17,000            |
| * In lieu of the surety bond calculation based on total annual disbursements, an Agency may use the average daily balance maintained in all trust accounts for the six months prior to submission of the application. |               |  |                    |                        |                     |

To the extent that an Agency has offset/credit employee bonding or fidelity insurance obtained in compliance with state regulations, the Agency must provide an insurance calculation similar to the example above when providing proof of the employee bonding or fidelity insurance in compliance with the Application for Approval as a Nonprofit Budget and Credit Counseling Agency.

### 5. Complete Section 6 of the Application.

## Section 7. **Acknowledgments, Agreements, and Declarations**

1. Agreement to Disclose Information to Clients. The Agency must provide full disclosure to a client, including funding sources, counselor qualifications, possible impact on credit reports, the cost of services to be paid by the client and the Agency's policy of providing counseling without regard to the ability to pay, and how the cost will be paid.
2. Acknowledgment of Prohibitions, Limitations, and Obligations Regarding Operations. By executing and submitting the Application for Approval as a Nonprofit Budget and Credit Counseling Agency, the Agency acknowledges the prohibitions, limitations, and obligations set forth in Appendix A, Acknowledgments, Agreements, and Declarations in Support of Application for Approval as a Nonprofit Budget and Credit Counseling Agency.

3. Complete Section 7 of the Application.

## **Section 8.      Certification and Signature**

The Agency's president, chairman, trustee, or other authorized official must declare, by signing the application, that he or she is authorized to complete the application on behalf of the Agency; that he or she has read and knows the contents of the application and all enclosures and attachments submitted; and he or she affirms under penalty of perjury that all of the representations and statements contained in the documents are true and correct to the best of his or her knowledge, information, and belief.